IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 809l of 2004

Morya Shikshan Sanstha... petitioner

vs

The State of Mah and ors.respondents

Mr.A.M.Joshi for Petitioner

Mr. V.P.Malvankar AGP for respondent l and 2

Mrs Kumud Bhatia for respondent no 3

CORAM;A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated 26.l0.2004

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Rule. Respondents waive service. By consent rule is made returnable forthwith. Heard Advoctes.

2. The petitioner is a public charitable trust and is running two schools viz. M.S.S.High School at Chinchwad in Pune district and M.S.S.High School at Dahiwadi in Solapur district. The lst respondent

is the State of Maharashtra and the 2nd respondent is the Education Officer (Secondary) Zilla Parishad,Pune . The 3rd respondent is the Head Master of the petitioner's High School at Chinchwad in Pune district. By this petition the petitioner is seeking to quash and set aside the orders dated 6.8.2004 and l6.8.2004 passed by the 2nd respondent (Exhibits J and L to the petition) . The petitioner is also praying for a direction that the proposal for suspension of 3rd respondent be considered afresh by any authority other than the 2nd respondent.

3. In short the case of the petitioners is that the 3rd respondent i.e. Head Master of the High School at Chinchwad has been indulging in activities which are detrimental to the petitioner institution and that he has joined hands with certain members of the trust who were defeated in the election to the managing committee of the trust and applications have been filed under section 4lA of the Bombay Public Trust Act at the behest of the 3rd respondent in the office of the Asst Charity Commissioner. It is alleged that the 3rd respondent has challenged the authority of the managing committee of the trust saying that he would not take any order from the elected committee

unless it is approved by the Asst Charity Commissioner. It is also the case of the petitioner that 3rd respondent instigated the 2nd respondent to file FIR against the two ex-trustees and the former Head Mistress of the school who is one of the sitting trustee of the petitioner trust and managed to get the news of such FIR being published in various news papers in Pune and thereby tarnished the image of the petitioner trust. The petitioner therefore took a decision to hold inquiry against 3rd respondent in respect of alleged misconduct committed by the 3rd respondent and issued order dated l2.8.2004 suspending the 3rd respondent. By the impugned order dated 6.8.2004 the 2nd respondent refused to grant approval to the decision of the management to suspend the 3ard respondent. It appears that the petitioner thereafter made a fresh proposal for suspension of the 3rd respondent and forwarded the same to the 2rd respondent. In response to this proposal the petitioner received from the 2nd respondent letter dated l6.8.2004 inter alia stating that the order of suspension cannot be issued without prior permission of the Education Officer and suspension cannot be sought on the basis of allegation of general nature There was also a reference to the criminal complaint filed against the management and

the petitioner institution was informed that permission sought for was refused. By an order passed on the same date the 2nd respondent directed that all the power of the School Committee is being given to the 3rd respondent. The legality and propriety of the orders dated 6.8.2004 and l6.8.2004 is questioned by the petitioner in this petition under Art 226 of the Constitution.

4. In Awdesh Narayan K Singh vs Adarsh Vidya Mandir Trust, 2004 (l) Mah L J 676, the Full Bench of this Court has held that normally an employee of a recognised school may be placed under suspension by the management after obtaining prior permission/ approval of an authority in accordance with sub-rule (l) of Rules 33 and 35 of the Maharashta Employees of Private Schools (Conditions of Service) Rules, l98l. In extra ordinary circumstances and emergent situations,where an employee is alleged to be guilty of grave charges and there is reason to believe that in the event of the guilt being proved against him/her, is likely to be reduced in rank or removed from service and the management decides to hold an inquiry, he/she may be placed under suspension under sub-rule (4) of Rule 35 without obtaining prior approval of education authority. Where an employee of a

recognised school is placed under suspension with prior approval as required by sub-rule (l) of Rules 33 and 35, sub-rule (3) of Rule 35 will operate and subsistence allowance will be paid in accordance with the said provision. Where an employee of a recognised school is placed under suspension without approval, sub-rule (4) of Rule 35 will apply and subsistence allowance will be paid by the management as laid down in the said provision. The Full Bench held that the decision of the Division Bench in Vanmala vs National Education Society, l982 Mah L J 403 did not lay down the correct law on the point and the said decision was over ruled. In the light of the decision of the Full Bench the suspension order will not be rendered illegal merely on the ground that the suspension was effected without prior approval of the education Officer and the only consequence would be that in such a case sub-rule (4) of Rule 35 would apply and subsistence allowance will be paid by the management as laid down in the provision. Therefore we are not inclined to interfere with the order of the Education Officer declining to grant approval to the order of suspension. It is needless to say that the management will be required to pay subsistence allowance to the respondent no. 3 as laid down in sub-rule (4) of

Rule 35.

5. By order dated l6.8.2004, the Education Officer has conferred power of the School Committee on the respondent no. 3 for a period of one year. This order is in the form of a letter addressed to the respondent no. 3 and the office translation of the same reads as follows:

"To

Shri D D Chavan (Head Master),
M S S High School
Chinchwad, Pune 33

Sub:About handing over powers of School Committee.

Ref:Your letter dt l3.8.2004.

On the above subject it is informed to you that the present management committee has not received approval of Hon'ble Jt Charity Commissioner. Since there are disputes and an offence is registered by this office against the Secretary and others with a view to ensure availability

of record in the police investigation and smooth running of the school, you are hereby handed over the powers of School Committee for a period of one year from l6.8.2004.During this period responsibility of school administration will be completely your personal responsibility which note.

After Jt Charity Commissioner grants approval to the Managing Committee after obtaining requisite orders in that respect you may present them to this office.

Education Officer(Secondary)
Pune Z.P.Pune".

6. Mr. Joshi learned counsel appearing for the petitioner submitted and not without sufficient force that neither under the Maharashtra Employees of Private Schools (Conditions of Service)Act, l977 nor the Rules framed thereunder confer powers on the Education Officer to take away the rights of the School Committee to confer the same on the Head Master. Mr Rane, learned AGP fairly conceded that no such power is conferred on the Education Officer. He submitted that the State Government is contemplating to pass an order appointing an

Administrator to the petitioner trust in view of the criminal complaint filed by the Education Officer agaisnt the petitinoer trust. He however assured the court that no such action will be taken without giving opportunity of hearing to the petitioner institution.

7. In the result we quash and set aside the order passed by the 2nd respondent dated l6.8.2004 (Exh L to the petition). The petitioner is directed to release forthwith the subsistence allowance of the 3rd respondent right from the dateof suspension till suspension is revoked or rescinded. It is made clear that this order will not preclude the 3rd respondent from challenging the order of suspension by adopting appropriate remedy in accordance with law. Petition is accordingly disposed of.